

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>JOSEPH FARMER</b>	)	
Claimant	)	
	)	
VS.	)	
	)	
<b>WESTERN ENGINEERING CO., INC.</b>	)	
Respondent	)	Docket No. <b>236,087</b>
	)	
AND	)	
	)	
<b>GENERAL CASUALTY CO. OF WI</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent and its insurance carrier request review of the May 18, 2011 Post Medical Award by Administrative Law Judge Kenneth J. Hursh. This is a post-award proceeding for medical benefits.<sup>1</sup> The Board heard oral argument on August 19, 2011. E.L. Lee Kinch, of Wichita, Kansas, was appointed by the Director to serve as a Pro Tem in this matter in place of former Board Member Julie Sample.

**APPEARANCES**

William L. Phalen of Pittsburg, Kansas, appeared for the claimant. Ryan D. Weltz of Overland Park, Kansas, appeared for respondent and its insurance carrier.

**RECORD AND STIPULATIONS**

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<sup>1</sup> In this case the parties properly proceeded under K.S.A. 44-510k which is the preferred statutory procedure created to cover or address disputes about or concerning post-award medical treatment. The statutory procedure provided by K.S.A. 44-510k avoids the jurisdictional issues that arose in *Siler v. U.S.D. No. 512*, 45 Kan. App.2d 586, 251 P.3d 92 (2011), regarding appeal from an order that followed the preliminary hearing procedure, and eliminates the necessity of multiple proceedings in order to obtain an appealable final decision. Moreover, in spite of the incorrect statement in the body of the decision in *Siler*, (that the preliminary hearing procedure in K.S.A. 44-534a is the only statutory method available for disputes regarding future medical treatment.) K.S.A. 44-510k is a statutory method, other than K.S.A. 44-534a, that was created to cover disputes regarding ongoing and future medical treatment. And a recent statutory amendment has clarified that claimant, respondent and insurance carriers can utilize K.S.A. 44-510k, the preferred procedural method.

The Board has considered the post award record and adopted the stipulations listed in the Award.

### ISSUES

This is the second post-award proceeding for medical treatment that has been before the Board on this claim. Claimant was injured on December 9, 1996, when he was struck by a car while working on a highway construction crew. The parties settled this claim in April 2000, with claimant reserving the right to request additional medical treatment. After the settlement, the respondent authorized Dr. R. David Parris to provide ongoing medical treatment for claimant which consisted primarily of monitoring medications. But in 2010, Dr. Parris recommended that claimant see an orthopedic specialist at KU Medical Center for right shoulder and neck complaints. Respondent denied the shoulder and neck complaints were related to the original injury. The dispute proceeded to the first post-award hearing and the Administrative Law Judge (ALJ) determined the neck and shoulder complaints were caused by the 1996 accidental injury. The ALJ ordered respondent to continue to provide claimant all treatment and evaluations recommended by Dr. Parris for conditions Dr. Parris relates to the work injury. On review, the Board affirmed that finding.

The respondent then sent claimant to Dr. Steven Hendler for continued treatment. Respondent interpreted the ALJ's initial Post Medical Award to require that it provide the medical treatment recommended by Dr. Parris but not that Dr. Parris was designated to remain the authorized treating physician. Consequently, the second-post award proceeding was held to primarily determine if the respondent correctly interpreted the ALJ's first Post Medical Award and, if so, claimant requested a change of physician back to Dr. Parris.

The ALJ ordered respondent to provide authorized medical with Dr. Parris including examination by Dr. Templeton as well as prescription medications. Respondent was ordered to pay authorized medical expenses for Dr. Parris and Mercy Health Systems physical therapy treatments.

Respondent requests review of the following: (1) whether claimant's medical treatment is reasonably necessary to cure and relieve claimant from the effects of his 1996 workplace injury; (2) whether claimant's current need for medical treatment is the natural and probable consequence of claimant's 1996 work-related injury; and, (3) whether claimant is entitled to post-award medical treatment.

Claimant's issues on review are: (1) whether respondent is liable for medical treatment provided by Dr. Templeton; and, (2) whether respondent is liable for claimant's follow-up treatments with Dr. Parris. Claimant argues that the ALJ's Post Award Medical should be affirmed.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

A review of the history of this claim is helpful to its resolution. This is the second post-award proceeding for medical treatment that has been before the Board on this claim. Claimant was injured on December 9, 1996, when he was struck by a car while working on a highway construction crew. The parties settled this claim in April 2000, with claimant reserving the right to request additional medical treatment. After the settlement, the respondent authorized Dr. Parris to provide ongoing medical treatment for claimant which consisted primarily of monitoring medications. But in 2010, Dr. Parris recommended that claimant see an orthopedic specialist at KU Medical Center for right shoulder and neck complaints.

Claimant initiated the first post-award proceeding after respondent terminated claimant's treatment with Dr. Parris in November 2009, which was shortly after Dr. Parris recommended that claimant return to Dr. Bruce Toby at the KU Medical Center for ongoing right shoulder and neck symptoms. But rather than approving the referral, respondent sent claimant to be evaluated by Dr. Eden Wheeler. Dr. Wheeler then opined that claimant's right shoulder and neck complaints were not related to the 1996 accidental injury.

At the first post-award hearing, claimant requested ongoing medical care with Dr. Parris which included ongoing pain management as well as prescribed compression hose and referral to Dr. Toby at KU Medical Center.<sup>2</sup> As previously noted, Dr. Wheeler testified that claimant's right shoulder and neck pain was not causally related to the 1996 accidental injury. Conversely, Drs. Prostic and Parris concluded the neck and shoulder pain was causally related to the 1996 accidental injury. The ALJ determined the opinion of the treating physician, Dr. Parris, was most persuasive and claimant had met his burden of proof to establish that his shoulder and neck complaints were causally related to his 1996 accidental injury. Accordingly, the ALJ ordered respondent to continue to provide claimant all treatment and evaluations recommended by Dr. Parris. The Post Award Medical decision specifically provided:

The respondent and insurance carrier shall continue to provide the claimant all treatment and evaluations recommended by Dr. Parris for conditions Dr. Parris relates to the work injury. Specifically, the respondent and insurance carrier shall provide as authorized medical expense the pain and arthritis medications, and Jobst compression stockings, prescribed by Dr. Parris, as well as an evaluation and

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<sup>2</sup> P.A.H. Trans. (Feb. 9, 2010) at 4.

additional treatment, if necessary, of the claimant's right shoulder and neck symptoms by Dr. Toby at KU Medical Center.<sup>3</sup>

The respondent requested review and in an Order dated September 16, 2010, the Board affirmed the ALJ's Post Medical Award. The Board's Order was not appealed.

Respondent interpreted the ALJ's June 30, 2010 Post Medical Award to require that it provide the medical treatment recommended by Dr. Parris but not that Dr. Parris was designated to remain the authorized treating physician. Consequently, respondent scheduled an appointment for claimant to see Dr. Hendler.

Initially, claimant was unaware that respondent was changing his authorized medical provider from Dr. Parris to Dr. Hendler. After claimant saw Dr. Hendler on October 25, 2010, claimant was not allowed to continue his treatment with Dr. Parris.

On November 2, 2010, claimant filed an Application for Post Award Medical requesting reimbursement for prescription medicines, payment of medical bills and medical treatment with Dr. Parris and Dr. Toby. At the post award hearing on January 24, 2011, the issues were framed in the following manner:

**THE COURT:** Okay. We're here for a post award medical proceeding in this case with Joseph Farmer and Western Engineering. Mr. Farmer is here in person and by his attorney Bill Phalen and Mike Kauphusman is representing the respondent and their insurance carrier. We talked for a while just trying to narrow down the issues we're looking at today. It looks like the issue we have in dispute is whether or not the respondent should be liable for providing an examination and treatment, if necessary, by Dr. Templeton over at KU Medical Center, whether the respondent is liable for follow-up appointments with Dr. Parris under the previous postaward order, whether the respondent is liable for medical bills set out in -- well, there's various ones set out in Claimant's Exhibit 1, which we'll get to in a moment; and finally, whether or not the respondent should, what, provide an alternative means for paying -- for filling prescriptions than is currently in place. Is that basically where we're at? Did I misstate anything?

**MR. PHALEN:** Yeah, I think so, Judge. And if the Court finds they've interpreted the order correctly and they have the ability to change the doctor from Dr. Parris to Dr. Hendler, we would be dissatisfied with Dr. Hendler's care and would ask for a change of physician back to Dr. -- or Dr. -- back to Dr. Parris.

**THE COURT:** Okay. Anything you want to add to what I said, Mike?

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<sup>3</sup> ALJ Post Medical Award (Jun. 30, 2010) at 3.

**MR. KAUPHUSMAN:** Just briefly, Judge. It's our position that we are complying to the terms of the prior order by authorizing care with Dr. Hendler, in addition to the referral to Dr. Burton through a recommendation by Dr. Toby.

**THE COURT:** Yeah, but I --

**MR. KAUPHUSMAN:** Just so we're clear, we're not denying care. We're authorizing care with Dr. Hendler and Dr. Burton.<sup>4</sup>

Claimant testified that Dr. Hendler changed his medications and did not refer him to see Dr. Templeton. Claimant expressed dissatisfaction with the treatment provided by Dr. Hendler specifically noting the doctor's refusal to follow up on prescribing Jobst compression stockings as well as the referral to the orthopedic specialist. Claimant further testified that the change in medications including a decrease in his pain medications has caused him to lose his temper a lot.

Dr. Parris, a board certified family physician, testified the last time he saw claimant was August 16, 2010. The doctor routinely would see claimant about every two months to check on his pain and make sure he was not having any side effects from the medicine. The medications prescribed for claimant's injuries included MS Contin, hydrocodone, naprosyn and Soma. On August 16, 2010, Dr. Parris gave claimant a cortisone injection, Decadron and DepoMedrol as well as refilled his prescription for Soma, a muscle relaxer. Dr. Parris explained the morphine and hydrocodone were for pain relief, the naproxen was an anti-inflammatory and the Soma was a muscle relaxant.

Dr. Parris testified that when he last saw claimant on August 16, 2010, those medications were his treatment recommendations for claimant's pain management. Dr. Parris further testified that he did not refer claimant to Dr. Hendler nor did he discuss changing claimant's medication needs with Dr. Hendler. On cross examination, Dr. Parris agreed that another physician could monitor claimant's medications. And Dr. Parris agreed that he was unaware whether Dr. Templeton was still practicing at KU but further noted he would defer to any orthopedic specialist at KU.<sup>5</sup>

Dr. Parris opined that claimant still needed to see Dr. Templeton and also needed the Jobst stockings. Dr. Parris noted that the regimen of the prescribed medications, stockings and sedentary activity had stabilized claimant better than he would have expected. The doctor further opined that claimant's current need for referrals to KU and treatment is the result of his 1996 work-related injury.

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<sup>4</sup> P.A.H. Trans. (Jan. 24, 2011) at 3-4.

<sup>5</sup> Claimant was treated by different orthopedic specialists at KU Medical Center. Dr. Toby provided treatment for claimant's upper extremities and Dr. Templeton treated claimant's lower extremities.

The ALJ analyzed the evidence in the following fashion:

There was nothing in the record to suggest the claimant has not received or will not receive reasonable and necessary medical treatment for the work injury through Dr. Parris. The respondent's authorization of Dr. Hendler and Dr. Toby was not in furtherance of the June 30, 2010 order but in defiance of it. The respondent has unreasonably refused to provide medical treatment in this case and in such circumstance, according to K.S.A. 44-510j, the claimant may provide the claimant's own medical treatment and the respondent shall be liable for such treatment as authorized medical expense. The claimant testified that he has been satisfied with the services of Dr. Parris.

The respondent and insurance carrier are, again, ordered to provide as authorized medical expense treatment recommended by Dr. Parris, which shall include an exam by Dr. Templeton, and to provide prescription medications without the claimant having to pay for medications out of pocket. The respondent and insurance carrier shall pay as authorized medical expense the bills for Dr. Parris and Mercy Health Systems physical therapy detailed in Claimant's Exhibit 1 to the January 24, 2011 Post Award Hearing, subject to the Kansas fee schedule.<sup>6</sup>

Respondent argues that the ALJ's Order entered by the ALJ after the first post-award proceeding did not specifically require Dr. Parris to continue to provide claimant's treatment. And respondent was providing treatment through Dr. Hendler and Dr. Burton.

At the first post-award proceeding held on February 9, 2010, the claimant specifically asked for the ongoing medical care of Dr. Parris.<sup>7</sup> The ALJ then ordered respondent to "continue to provide the claimant all treatment and evaluations recommended by Dr. Parris for conditions Dr. Parris relates to the work injury." This language clearly envisions that Dr. Parris would continue to provide claimant's medical treatment. Moreover, respondent's argument that Dr. Hendler is providing the treatment recommended by Dr. Parris is refuted by claimant's testimony that Dr. Hendler had changed his medications. And by Dr. Parris' testimony that he did not change the recommended medications nor discuss claimant's medications with Dr. Hendler. Simply stated, Dr. Hendler is not providing the treatment recommended by Dr. Parris. Consequently, the Board affirms the ALJ's Post Medical Award not only for respondent's failure to provide medical treatment, the referral to Dr. Templeton, but also for the respondent's refusal to obey the ALJ's Order regarding who would provide the treatment.

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<sup>6</sup> ALJ Post Medical Award (May 18, 2011) at 2-3.

<sup>7</sup> P.A.H. Trans. (Feb. 9, 2010) at 4.

As required by the Workers Compensation Act, all five members of the Board have considered the evidence and issues presented in this appeal.<sup>8</sup> Accordingly, the findings and conclusions set forth above reflect the majority's decision and the signatures below attest that this decision is that of the majority.

**AWARD**

**WHEREFORE**, it is the decision of the Board that the Post Medical Award of Administrative Law Judge Kenneth J. Hursh dated May 18, 2011, is affirmed for the foregoing reasons.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of September, 2011.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: William L. Phalen, Attorney for Claimant  
Ryan D. Weltz, Attorney for Respondent and its Insurance Carrier  
Kenneth J. Hursh, Administrative Law Judge

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<sup>8</sup> K.S.A. 2010 Supp. 44-555c(k).